

on this measure, and a placement rate of less than 20 percent would be a failure on that measure, unless one of more adjustment factor applies. All of the levels will be negotiated with the Department on a grantee-by-grantee basis, which will then become the basis for determining the range for each indicator as discussed in proposed § 641.740.

What Sanctions Will the Department Impose if a Grantee Fails To Meet Negotiated Levels of Performance? (§ 641.750)

Grantees that fail to meet negotiated levels of performance will be subject to the sanctions established in section 514 of the OAA. These sanctions range from requiring the grantee to submit a corrective action plan and receive technical assistance, to competition of part of the funds, to a competition of all of the funds. Technical assistance may take many forms depending on the needs of the grantee and the availability of resources within the Department. In some cases, review of reports and discussions with a grantee may be sufficient. In other cases, recommending participation in formal training may be warranted, and in still other cases, direct on-site assistance provided by Department staff, peers, or contractors may be necessary. The degree of assistance available will largely be determined by the nature of the problem, the extent of the failure, and the resources available to address it.

The statutory scheme for applying sanctions is grantee specific (*i.e.*, national grantee, national grantee in a State, or State grantee). (See proposed §§ 641.760–641.790). The Department will determine if sanctions should be applied not later than 120 days after the end of each Program Year. (See OAA sec. 514). Therefore, grantees and the Department will not know if a grantee has failed its performance measures until the grantee has already begun the next Program Year. As a result, the Department strongly encourages all grantees to regularly monitor their performance and seek technical assistance when problems arise.

Additionally, if a grantee fails only the customer satisfaction performance measure, that failure will not in itself trigger the imposition of sanctions if the grantee has met its other performance measures and the failure to meet the customer satisfaction measure causes a grantee to fail to meet its performance measures in the aggregate. The Department is taking this position in recognition of the difficulty it understands grantees may face in obtaining this information and because

of the potential difficulties in obtaining response rates high enough to assure survey accuracy at an acceptable level. The Department will provide additional instructions for how customer satisfaction will be measured.

What Sanctions Will the Department Impose if a National Grantee Fails To Meet Negotiated Levels of Performance Under the Total SCSEP Grant? (§ 641.760)

Proposed § 641.760 outlines the sanctions required under section 514(e) of the OAA that apply when a national grantee fails to meet its performance measures for its entire SCSEP grant. In the first year of failure, the Department will provide technical assistance and the national grantee must submit a corrective action plan no later than 160 days after the end of the Program Year. If a grantee fails to meet the national performance measures for a second consecutive Program Year, the Department will have a national competition in the next Program Year for 25 percent of the funds that were awarded to the grantee, while also minimizing disruptions to current participants to the extent possible. Thus, the failing grantee will receive only 75 percent of its former grant award. The Department reserves the right to specify the locations of the positions that will be subject to competition. Further, the Department may explore a number of options to determine how this competition will be conducted. The Department will establish the parameters of a competition through a Solicitation for Grant Application or comparable instrument.

If a grantee fails to meet its performance measures for a third consecutive Program Year, the Department will conduct a national competition for the full amount of the reduced grant in the following Program Year. Any new national grantee selected through this process must serve the geographic areas served by the former grantee. Any entity eligible to apply for national grants may compete for such funds, including Federal public agencies and organizations, private nonprofit organizations, and tribal organizations. (See proposed § 641.400 on eligible entities).

What Sanctions Will the Department Impose if a National Grantee Fails To Meet Negotiated Levels of Performance in Any State That It Serves? (§ 641.770)

Proposed § 641.770 outlines the sanctions that apply to a national grantee that fails to meet its performance measures in any State that

it serves. This provision is required under section 514(e)(3) of the OAA and is intended to monitor those national grantees that may be meeting national performance goals but are failing their goals in a particular State. In any Program Year that a national grantee attains levels of 20 percent or more below the national performance measures and fails to meet the State's performance levels for a project carried out in the State, the Department will take corrective action. The Department interprets this requirement as applying when the Department determines that there is a failure, and there are no justifications that the national grantee can provide, such as the size of the project or the adjustment factors described in § 641.730. Thus, national grantees in a State must perform at 80 percent of the national performance measures and meet the State's level of performance to meet performance objectives, unless there is a justification for lower performance. The Department proposes to monitor national grantee State-by-State performance each Program Year or at the Governor's request. (See OAA §§ 514(e)(3)–514(e)(4) and proposed § 641.780). The Department interprets the phrase "project carried out in a State" to mean all of a grantee's projects in a State so that no single project in a State will provide a basis to initiate a review or sanctions.

The first Program Year in which a national grantee fails to meet its performance measures in a State, the Department will require a corrective action plan and may require the transfer of the responsibility for the project to other grantees, provide technical assistance, and take other appropriate actions. After a second consecutive year of failure to meet the performance criteria, the Department will either transfer all or part of the responsibility for a project to a State, public agency, or private nonprofit agency or organization, or compete all or a portion of the funds. After a third consecutive year of failure to meet the performance criteria, the Department will conduct a competition for the remaining funds. Any entity eligible to receive a SCSEP grant may apply for these funds, with the exception of the grantee that is subject to the sanction.

When Will the Department Assess the Performance of a National Grantee in a State? (§ 641.780)

Proposed § 641.780 provides the Department's interpretation of the requirements in section 514(e)(3)–(e)(4) of the OAA. These provisions require the Department to assess the